

Before the
COPYRIGHT ROYALTY BOARD
United States Copyright Office
Washington, DC

In re

Distribution of Digital Audio Recording
Royalty Funds

CONSOLIDATED
Docket No. 2008-3 CRB DD
(2007-2011 SRF)

**OPPOSITION TO CIRCLE GOD NETWORK INC. D/B/A DAVID POWELL'S
MOTION FOR LEAVE TO FILE A LATE PETITION TO PARTICIPATE SS.351.1 (d)**

Pursuant to 17 U.S.C. § 803(b)(1)(A)(ii), 37 C.F.R. § 351.1(d) and the Copyright Royalty Board (“CRB”) order dated February 27, 2019 and in response to the motion filed by David Powell (“Powell”) in the name of “Circle God Network Inc d/b/a David Powell”¹, the Alliance of Artists and Recording Companies (“AARC”) hereby files its opposition to Powell’s “Motion for Leave to File a Late Petition to Participate ss.351.1 (d).” 17 U.S.C. § 803(b)(1)(A)(ii) (2017); 37 C.F.R. § 351.1(d) (2019); Order Granting AARC Motion to Reject David Powell’s Defective Filings and Dismissing David Powell, In the Matter of Distribution of Digital Audio Recording Royalty Funds, CONSOLIDATED Docket No. 2008-3 CRB DD (2007-2011 SRF) (Feb. 27, 2019) (“Order Dismissing Powell”); Motion for Leave to File a Late Petition to Participate SS.351.1 (d), In the Matter of Distribution of Dart Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011) (Apr. 30, 2019) (“Powell Motion”).

¹ Section 350.2 of the CRB regulations states that “[i]ndividual parties in proceedings before the Judges may represent themselves [, . . . a]ll other parties must be represented by an attorney.” 37 C.F.R. § 350.2 (2019). According to the eCRB participant list, “Powell, David” has withdrawn from the proceeding. eCRB, Participant List, <https://app.crb.gov/case/participants/CONSOLIDATED%202008-3%20CRB%20DD%20%282007-2011%20SRF%29> (last visited on May 5, 2019). Powell made several filings, including this motion, in the name of “circle god network inc d/b/a david powell” which, unlike other two “pro se” parties, is not labeled as a “pro se” filer in the eCRB system. *Id.* On the other hand, Powell signed the document as “David Powell, Pro Se” in his motion. Powell Motion at 5. Therefore, it is unclear whether this party is an individual or a corporate entity represented by Powell. If the party is the corporate entity, “Circle God Network Inc.,” this filing should be rejected pursuant to Section 350.2 because nothing in the record establishes that Powell is an attorney. 37 C.F.R. §350.2.

AARC respectfully requests that the Powell Motion be denied because it failed to show “substantial good cause” for the CRB to accept a late petition. 17 U.S.C. § 803(b)(1)(A)(ii); 37 C.F.R. § 351.1(d). Moreover, Powell failed to comply with the CRB’s specific order to “file a motion seeking leave to file a late Petition to Participate and *stating reasons (supported by facts and arguments)* the Judges should find that his request meets the conditions in section 351.1(d)” if he wanted to participate in this proceeding. Order Dismissing Powell at 3-4 (emphasis added); 37 C.F.R. § 351.1(d).

BACKGROUND

On December 20, 2018, Powell filed his defective document through the e-filing system. Verified Motion Petition to Participate for Dart Partial and Final Distribution, Agreed Yes W/ Settling Parties and Allocation Phase Parties I and II and Added to Settlement List, In the Matter of Distribution of Any Consolidated Dart Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Dec. 20, 2018) (“First Petition”). On January 24, 2019, Powell refiled an identical copy of the defective filing dated December 20, 2018. Verified Motion Petition to Participate for Dart Partial and Final Distribution, Agreed Yes W/ Settling Parties and Allocation Phase Parties I and II and Added to Settlement List, In the Matter of Distribution of Any Consolidated Dart Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Jan. 24, 2019) (“Second Petition”).

On February 6, 2019, AARC filed the motion to reject Powell’s defective filings. Motion to Reject David Powell’s Defective Filings, In the Matter of Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (Feb. 6, 2019). AARC’s motion was granted by the CRB pursuant to its order on February 27, 2019 which

rejected Powell's defective filings and dismissed Powell from this proceeding. Order Dismissing Powell.

On April 30, 2019, Powell filed the motion seeking leave to file a late Petition to Participate. Powell Motion. In his motion, Powell stated the following as his "substantial good cause":

Mr. Powell in fact did have a substantial good cause existed w/ extra ordinary circumstances. Facts unavoidable excusable neglect, casualty, & misfortune. Mr. Powell is Guardian to a 71 years old woman. She had to be hospitalized for 2 major grand mal seizures. During the period 24 Dec. 2018-Feb. 28,2019. Due to her medical needs I made several clerical errors. 2nd Substantial good cause existed, 1-20,24-2019 documented reported online technical repeated problems w/ pop up screen Petition to Participate matter of record. ss.350.5 m(1-3), 350.6 (b)(4). /sic/

Powell Motion at 2.

ARGUMENT

Pursuant to Section 803(b)(1)(A)(ii) of the Copyright Act and Section 351.1(d) of the CRB regulations, a late-filed Petition to Participate will only be accepted by the CRB "for substantial good cause shown" and if acceptance of such late-filed petition does not prejudice the other timely-filed participants. 17 U.S.C. § 803(b)(1)(A)(ii); 37 C.F.R. § 351.1(d). The term "substantial good cause" imposes a higher threshold than "mere good cause." Procedural Regulations for the Copyright Royalty Board, Procedural Regulations for the Copyright Royalty Board, 70 Fed. Reg. 30,901, 30,903 (May 31, 2005). In its order dismissing Powell, the CRB also specifically and clearly notified Powell that if he wants an opportunity to file an untimely petition, he must first file a motion "stating reasons (supported by facts and arguments)" that the CRB can use to determine if such request meets the standard found in Section 351.1(d). Order Dismissing Powell at 3-4; 37 C.F.R. § 351.1(d).

In his motion, Powell stated two bases in support of his “substantial good cause,” however, none of them were “supported by facts.” Order Dismissing Powell at 4. Firstly, Powell asserted that he “is Guardian to a 71 years old woman” who was “hospitalized for 2 major grand mal seizures” from December 24, 2018 to February 28, 2019 and because of “her medical needs”, Powell “made several clerical errors” in his prior petitions. Powell Motion at 2. Interestingly, Powell’s excuse of caring for an ill person is remarkably similar to that used by another party in this proceeding, Eugene Curry (“Curry”), to show “substantial good cause.” See Motion to Re-consider AARC Proposed Order for Eugene Curry Dismissal Due to Extraordinary Circumstances, In the Matter of Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (March 23, 2019). However, unlike Curry, who provided the CRB with medical records to substantiate his claim, Powell provided no medical record or other similar documents in support of his claim that the person he was allegedly caring for was “hospitalized for 2 major grand mal seizures” from December 24, 2018 to February 28, 2019. See Order Acknowledging Receipt of Responsive Exhibit from Eugene Curry and Authorizing Response, In the Matter of Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (Apr. 4, 2019). The higher standard of “substantial good cause” and the CRB’s specific order to “state reasons (supported by facts and arguments)” cannot be satisfied with a bald assertion without any proof to support it.

Instead of supporting documents, Powell attached a Mingo Junction Police Department Compliant Report (“Compliant Report”) dated January 24, 2019, which appeared to be either irrelevant or contradictory to Powell’s claim that a person he was allegedly caring for was “hospitalized for 2 major grand mal seizures” from December 24, 2018 to February 28, 2019. Powell Motion at 6. Specifically, the Complaint Report is “in regards to adult protective services

requesting assistance from an officer” where the officer came to “st[and] by in the kitchen with Mr. Powell” while the government personnel was speaking with “Ms. Linda Courcier” to determine if there was any abuse going on in the residence. Id. If “Ms. Linda Courcier” mentioned in this Compliant Report is the woman that Powell alleged to be hospitalized during December 24, 2018 to February 28, 2019, this document rebuts Powell’s claim of “substantial good cause” since, according to the police record, the personnel “spoke with Ms. Courcier” at a residence on January 24, 2019. Id. at 2, 6. Therefore, Ms. Courcier was at home, not in the hospital, on January 24, 2019. On the other hand, if “Ms. Linda Courcier” is not the woman alleged to be hospitalized at that time, then this document is clearly irrelevant to Powell’s motion. Id. at 6. Nonetheless, either way, this Compliant Report did not support Powell’s assertion that he was allegedly caring for a person who was “hospitalized for 2 major grand mal seizures” from December 24, 2018 to February 28, 2019. Id. at 2.

Additionally, Powell appeared to claim “online technical repeated problems” as “substantial good cause” for the CRB to accept his late petition. Powell Motion at 2. However, it is unclear as to when such technical problems occurred and how they impaired Powell’s ability to timely file a valid Petition to Participate since Powell successfully uploaded two defective petitions, prior to the January 25, 2019 deadline for filing Petitions to Participate in this proceeding. First Petition; Second Petition. In fact, Powell did not file a notice of technical difficulty, as required in Section 350.5(m) of the CRB regulations, until almost two months after the Petition to Participate due date. 37 C.F.R. § 350.5(m) (2019). Additionally, Powell was able to file several documents, including this Powell Motion, after January 25, 2019. See Motion Averement /sic/ Notice Has Been Given Pursant /sic/ to SS. 360.24(A-D), In the Matter of Distribution of Digital Audio Recording Royalty Funds, CONSOLIDATED Docket No. 2008-3

CRB DD (2007-2011 SRF) (Mar. 11, 2019); see also Common Agent d/b/a David Powell & Circle God Network Inc. Motion for Seeking Leave for enlargement of Time to Cure Defects SS. 350.1(d), In the Matter of Distribution of Digital Audio Recording Royalty Funds, CONSOLIDATED Docket No. 2008-3 CRB DD (2007-2011 SRF) (Mar. 13, 2019) (“Motion for Enlargement”); see also Powell Motion. Finally, while Powell eventually filed the “eCRB Computer Software Problems Notice” with the CRB on March 21, 2019, it is unclear as to what documents he was trying to file when he experienced such technical difficulty. 3rd Notice of Averement /sic/ Continuous Action, In the Matter of Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Mar. 21, 2019) (“Powell Notice”). Notably, the document that Powell claimed to be unable to upload in his notice, a motion “Seeking Leave for Enlargement of Time to refile Petition to Participate,” was successfully uploaded to the eCRB system well before he filed the Powell Notice. Id. at 1, 4; Motion for Enlargement. In fact, the Motion for Enlargement has already been addressed and dismissed by the CRB. Order Denying Powell Motion for Enlargement of Time, Docket No. CONSOLIDATED 2008-3CRB-DD (2007-2011 SRF) (March 25, 2019); Motion for Enlargement. Powell’s allegations of technical difficulties are contradicted by the facts and therefore, suspect.

Next, it seems that Powell consolidated his motion seeking leave to file a late Petition to Participate and his Petition to Participate in the Powell Motion. Powell Motion at 1-3. However, the CRB has not yet granted Powell the right to file a late petition. Therefore, AARC will not address, in this opposition, any statements in the Powell Motion regarding “significant interest,” the subfunds and years to which Powell is asserting a claim, and his opposition to a paper proceeding. Id.

Finally, much of the Powell Motion is incomprehensible. So, AARC cannot address many of Powell's allegations and statements, since we cannot address allegations and statements that we "cannot understand." See Order Denying Powell Motion, In the Matter of Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Mar. 25, 2019).

WHEREFORE, in view of the foregoing, AARC respectfully requests that the CRB deny Powell's motion seeking leave to file a late petition for his failure to establish "substantial good cause" for filing late.

Respectfully submitted,
On Behalf of AARC

/s/Linda R. Bocchi, Esq.

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May 7, 2019

Proof of Delivery

I hereby certify that on Tuesday, May 07, 2019 I provided a true and correct copy of the Response in Opposition on Motion for Leave to File a Late Petition to Participate ss.351.1 (d) to the following:

Kelly, Herman, represented by HERMAN KELLY MR served via Electronic Service at hermankelly@att.net

Curry, Eugene, represented by Eugene Curry Mr. served via Electronic Service at lambchopsmusic@voicenet.com

circle god network inc d/b/a david powell, represented by david powell served via Electronic Service at davidpowell008@yahoo.com

Signed: /s/ Linda R Bocchi